

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-1036

MICHAEL LAGASSE, KRISTI  
LAGASSE, FLOYD WIEDOWER, and  
BETTY WIEDOWER,  
APPELLANTS

V.

BRIAN K. STRAIT and DELANA W.  
STRAIT,  
APPELLEES

**Opinion Delivered** 8 April 2009

APPEAL FROM THE WHITE  
COUNTY CIRCUIT COURT,  
[NO. CV2006-577]

THE HONORABLE WILLIAM  
PICKENS MILLS, JUDGE

DISMISSED

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## D.P. MARSHALL JR., Judge

For lack of a final order we must dismiss this case about who gets the mineral rights in a piece of White County property. In 2003, Michael Lagasse, Kristi Lagasse, Floyd Wiedower, and Betty Wiedower sold approximately sixty-two acres to Brian Strait and Delana Strait. The parties' contract was a one-page form, which the Straits got from their banker. The parties agreed that the sellers would convey a "fee simple absolute" interest in return for \$113,150.00 from the buyers. Faulkner County Title Company closed the sale. The sellers' deed, which the title company prepared at the sellers' request and direction, reserved mineral rights in the property. At the closing, the buyers had the opportunity to review the deed but the reservation was either overlooked or accepted—that is the fighting issue now that the Fayetteville Shale play has made the mineral rights valuable.

Several years later, the buyers sued the sellers to get the mineral rights to the property and all the benefits due the sellers under an oil-and-gas lease. Those benefits included a bonus payment of about \$30,000.00. The sellers had leased the mineral rights approximately four years after the closing. On cross motions for summary judgment, the circuit court ruled for the buyers. The court ordered the sellers to convey the mineral rights, assign the lease, and turn over the bonus payment. The sellers appeal. The jurisdictional difficulty is that the buyers also sued Faulkner County Title Company. They alleged fraud (actual or constructive), breach of fiduciary duty, and violation of Arkansas's Deceptive Trade Practices Act. Ark. Code Ann. §§ 4-88-101-4-88-115 (Repl. 2001 and Supp. 2007).

The buyers' claims against Faulkner County Title remain unresolved. No Rule 54(b) certification of the summary-judgment order was sought or made. Ark. R. Civ. P. 54(b); *Hodges v. Huckabee*, 333 Ark. 247, 251-52, 968 S.W.2d 619, 621-22 (1998). The buyers prevailed against the sellers, but the resulting judgment did not necessarily extinguish their tort and statutory claims (including for attorney's fees) against the title company. The buyers cannot get a double recovery; the unresolved claims, however, could support a recovery beyond what the circuit court ordered. The remaining claims need to be adjudicated, either on the merits or by voluntary dismissal, to create finality. *Van DeVeer v. George's Flowers, Inc.*, 76 Ark. App. 408, 410-11, 65 S.W.3d 489, 489-90 (2002). We therefore dismiss the sellers' appeal without prejudice.

GRUBER and GLOVER, JJ., agree.